

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MARCUS ANTHONY JOHNSON

PLAINTIFF

v.

Civil No. 4:18-cv-04166

SHERIFF ROBERT GENTRY, Sevier County,
Arkansas; JAIL ADMINISTRATOR CHRIS
WOLCOTT; ASSISTANT JAIL ADMINISTRATOR
TERRY HERNANDEZ; SOUTHERN HEALTH
PARTNERS, INC.; DR. STEVEN FOLTZ; and
JAILER ANTHONY DAVUCCI

DEFENDANTS

ORDER

Currently before the Court is Plaintiff's failure to comply with Court orders. Plaintiff Marcus Anthony Johnson filed this 42 U.S.C. § 1983 action *pro se* on December 18, 2018. (ECF No. 1). Plaintiff's motion to proceed *in forma pauperis* was granted that same day. (ECF No. 3).

On September 11, 2019, Defendants Southern Health Partners, Inc. and Foltz filed a Motion for Summary Judgment. (ECF No. 16). That same day, the Court entered an order directing Plaintiff to file a response to the motion by October 3, 2019. (ECF No. 19). The order informed Plaintiff that failure to timely and properly comply would result in this case being dismissed. To date, Plaintiff has not complied with the order to file a response to Defendants Southern Health Partners, Inc. and Foltz's Motion for Summary Judgment, and the order has not been returned as undeliverable.

On September 16, 2019, Defendants Davucci, Gentry, Hernandez, and Wolcott filed a Motion for Summary Judgment. (ECF No. 20). That same day, the Court entered an order directing Plaintiff to file a response to the motion by October 8, 2019. (ECF No. 23). This order informed Plaintiff that failure to timely and properly comply would result in this case being

dismissed. To date, Plaintiff has not complied with this Court's order to file a response to Defendants Davucci, Gentry, Hernandez, and Wolcott's Motion for Summary Judgment, and the order has not been returned as undeliverable.

On October 11, 2019, the Court entered an order directing Plaintiff to show cause by October 25, 2019, as to why he failed to respond to Defendants' Motions for Summary Judgment. (ECF No. 24). To date, Plaintiff has not responded as directed, and the order has not been returned as undeliverable.

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The Local Rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on "the plaintiff's failure to comply with any court order". *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

In the case at bar, Plaintiff has failed to obey three court orders. None of these orders have been returned to the Court as undeliverable. Therefore, pursuant to Federal Rule of Civil

Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that this case should be dismissed. Accordingly, Plaintiff's Complaint (ECF No. 1) is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 4th day of November 2019.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge